IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16603 of 2004
With
CIVIL APPLICATION No. 9991 of 2004
In SPECIAL CIVIL APPLICATION No. 16603 of 2004
With
CIVIL APPLICATION No. 29 of 2005
In SPECIAL CIVIL APPLICATION No. 16603 of 2004
With
SPECIAL CIVIL APPLICATION No. 17118 of 2004
To
SPECIAL CIVIL APPLICATION No. 17122 of 2004
With
SPECIAL CIVIL APPLICATION No. 156 of 2005
To
SPECIAL CIVIL APPLICATION No. 190 of 2005
With
SPECIAL CIVIL APPLICATION No. 199 of 2005
To
SPECIAL CIVIL APPLICATION No. 203 of 2005
With
SPECIAL CIVIL APPLICATION No. 917 of 2005
With
SPECIAL CIVIL APPLICATION No. 688 of 2005
To
SPECIAL CIVIL APPLICATION No. 705 of 2005
With
SPECIAL CIVIL APPLICATION No. 710 of 2005
To
SPECIAL CIVIL APPLICATION No. 730 of 2005
With
SPECIAL CIVIL APPLICATION No. 731 of 2005
To
SPECIAL CIVIL APPLICATION No. 752 of 2005
With
SPECIAL CIVIL APPLICATION No. 753 of 2005
To
SPECIAL CIVIL APPLICATION No. 758 of 2005
With
SPECIAL CIVIL APPLICATION No. 11223 of 2005
To
SPECIAL CIVIL APPLICATION No. 11238 of 2005
With
SPECIAL CIVIL APPLICATION No. 19646 of 2005
With
SPECIAL CIVIL APPLICATION No. 19647 of 2005

With
CIVIL APPLICATION No. 4254 of 2006
In
SPECIAL CIVIL APPLICATION No. 156 of 2006
To
CIVIL APPLICATION No. 4273 of 2006
With
CIVIL APPLICATION No. 4275 of 2006
In
SPECIAL CIVIL APPLICATION No. 688 of 2006
With
CIVIL APPLICATION No. 4278 of 2006
In
SPECIAL CIVIL APPLICATION No. 690 of 2006
With
CIVIL APPLICATION No. 4279 of 2006
In
SPECIAL CIVIL APPLICATION No. 691 of 2006
With
CIVIL APPLICATION No. 4280 of 2006
In
SPECIAL CIVIL APPLICATION No. 692 of 2006
With
CIVIL APPLICATION No. 5076 of 2006
In
SPECIAL CIVIL APPLICATION No. 751 of 2006
To
CIVIL APPLICATION No. 5117 of 2006
With
CIVIL APPLICATION No. 5129 of 2006
In
SPECIAL CIVIL APPLICATION No. 11224 of 2005
To
CIVIL APPLICATION No. 5139 of 2006
With
CIVIL APPLICATION No. 5527 of 2006
In
SPECIAL CIVIL APPLICATION No. 203 of 2005
To
CIVIL APPLICATION No. 5535 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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DID FRANCHISEES ASSOCIATION (GUJARAT) - Petitioner(s)
Versus

BHARAT SANCHAR NIGAM LTD - Respondent(s)

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Appearance :
MR NM KAPADIA for Petitioner(s) : 1,
MR DHAVAL M BAROT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 19/07/2006

ORAL JUDGMENT

1.0 The petitioners-herein, have filed Special Civil Application No.121 of 2001 and cognate matters in which this Court on 09.08.2004 passed an order, the operative part of which reads as under,

> "... 9.0 In view of the aforesaid discussion, I do not find any substance in the contention the petitioners have no remedy under section 14 of the Act of 1997. Merely on that ground the petitioners cannot invoke jurisdiction of this Court under Article 226 of the Constitution of India, especially when the decision is a policy decision taken by the appropriate competent authority within its power and jurisdiction and the decision is to achieve the object of the Act.
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> 9.1 When a competent authority constituted under the Act has taken a decision and which has been accepted by the licensee

viz. the respondents, sub-licensee cannot challenge the same merely on the basis that such decision is not favourable to petitioners. The petitioners have not pointed out that the decision of revising the charges is arbitrary or against the public interest. Therefore, it is clear that the petitioners are bound by the terms and conditions imposed in the said notification and the petitioners cannot charge more than Rs.0.90ps upto 500 metered call units per month and Rs.1.10 for calls above 500 metered call units per month.

9.2 A perusal of the decision clearly shows that the decision is taken with a view to attract more consumers and certainly the benefits go to such consumers at large. Apart from that the BSNL will not pay 20 paise commission to the licensee, but that will be adjusted against the rent of Rs.100/- and overhead expenses can be adjusted from Rs.25/-. Thus, when the expert body has taken a decision keeping in mind the consumers at large, this Court will not substitute its decision inasmuch as this Court is not sitting in appeal over the decision of the Expert Committee.

10.1It is also required to be noted that the petitioners were entitled for 20 paise commission for first 10000 calls, and in view of this, BSNL will not be in a position to pay any commission for 10000 calls since they will not be collecting the same as per TRAI Notification. In light of the above discussion, the terms may be modified by the respondents.

10.2 In the premises aforesaid, I do not find any substance in the contentions raised on behalf of the petitioners. The petition are, therefore, rejected. Rule/Notice, wherever issued, are discharged with no order as to costs. Interim relief, if any, stands vacated. However, it is observed that the respondents will implement the decision of TRAI in its true spirit and will not pay any commission to the petitioners for the first 500 calls per extension and commission will be paid after adjusting this in the bill. In view of the above discussion, the respondent authorities may reconsider the letter dated 2nd January 2001.

10.3 At this stage Mr. Nanavati has requested to continue the interim relief granted in the petition. However, as stated hereinabove, the authorities are duty bound to implement the decision of the respondent no.5 and this Court cannot sit in appeal over the decision of the expert committee, I do not see any reason to extend the interim relief granted earlier especially when the matter involves public money. The request is therefore rejected."

2.0 Pursuant to the above order, a bill dated 10.09.2004 was issued to the members of the petitioners' association running EPABX, and the said bill as well as earlier bills were paid by the petitioners without benefit of commission,

under protest. Thereafter, this Court vide order dated 21.10.2004 passed in M.C.A. No.1781 of 2004 directed the respondent to pay the amount of commission. Again on 10.11.2004, the petitioners were issued bills dated 10.10.2004 and 10.11.2004 at the rate of 0.90 paise as per the order of this Court dated 09.08.2004. It may be noted that, though, request was made by the petitioners, the amount of commission was not shown in the said bills. The petitioners were, thereafter, issued bills for the month of November 2004. The case of the petitioners is that they are prepared to pay the bills, on condition that they should be paid amount of commission as per the order of this Court in Review Application. Pursuant to that the connections of the members of the petitioners' association came to be disconnected by the respondent without any notice which were later on reconnected. The respondent, thereafter, revised the bills for the period of September, October

and November 2004 showing amount of commission. Since the amount of call charges were charged at the rate of Rs.1.10 per in the said bills, the petitioners have preferred these petitions.

3.0 Heard, learned Advocate for the respective parties at length. As a result of hearing and on perusal of the documents placed on record, I am of the view that the ends of the justice would met by passing following order,

3.1 The petitioners shall collectively make a representation to the Central Government i.e. Senior Deputy Director General, B.S.N.L., New Delhi within a period of four weeks from today to reconsider the letter dated 02.01.2001 in accordance with law for the period before 01.12.2004. The said Authority shall consider the representation of the petitioners in accordance with law and in light of the directions given in the order of this Court dated 09.08.2004, within

a period of three months from receipt of the same after affording personal hearing to the representatives of the petitioners.

3.2 It may be noted that the stay against the recovery proceedings for a period prior to 01.12.2004, shall continue on condition that the petitioners shall file an undertaking to make payment of their dues in case the decision of the Authority is against them within a period of four weeks from today.

3.3 In case, the petitioners fail before the authority, they are directed to pay the amount in question immediately so that the amount of the Central Government is protected, subject to its challenge in accordance with law. Moreover, the petitioners shall not create any third party right or charge on the property in question, till then i.e. final disposal of the representation/ the matter.

3.4 It would be open to the petitioners to make a request to the authority to consider-waiver of demand if they have not charged any amount over ninety paise for the first five hundred calls. The said request may be considered by the authority if it deems it proper and feasible, in the facts and circumstances of the case.

3.5 In case, if the petitioners succeed before the Authority, the amount in question, if any, shall be adjusted against the future bills.

3.6 It shall be open to the petitioners to raise all the contentions before the authority i.e. Senior Deputy Director General, BSNL and the Authority shall consider the same sympathetically, keeping in mind the judgment of this Court as well as interest of all the parties, and shall decide the same in accordance

with law.

3.7 It shall be open for the petitioners to challenge the order of the Authority, if the same is adverse to them. The issue of commission for the period between August 2004 to December 2004 shall also be decide in consonance with the order in Review Petition, in accordance with law.

4.0 With the above observations and directions, the S.C.A.s stand disposed of. No order as to costs.

4.1 Since, the main matters are disposed of C.A.s would not survive and it also stand disposed of accordingly. No order as to costs.

(K.S. Jhaveri,J.)

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